

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDGAR AMIR GRACIANI,

Petitioner,

v.

CAROL HOLINKA,

Respondent.

ORDER

11-cv-296-bbc

In an order dated May 9, 2011, dkt. #5, I allowed petitioner Edgar Amir Graciani to proceed under 28 U.S.C. § 2241 on a claim that the Federal Bureau of Prisons was violating his rights under the First Amendment and 18 U.S.C. § 3624 by refusing to transfer him to a halfway house. However, I concluded that his other claims could not be brought in a petition for a writ of habeas corpus because they were not challenges to his “custody.” These included his claims that the bureau has concluded incorrectly that he is ineligible for a sentence reduction, that prison officials placed him in segregation because of complaints he made about prison conditions, that prison officials have “mislabel[ed]” and “slander[ed]” him and that prison officials are threatening him in an attempt to stop him from filing grievances.

Petitioner has filed a motion in which he asks the court to reconsider its conclusion regarding his eligibility for a sentence reduction and his placement in segregation. Dkt. #6. In addition, he asks the court to “protect [him] f[rom] any retaliation.” I am denying petitioner’s motion because he has not shown that I erred in concluding that he may not raise these claims under § 2241.

With respect to petitioner’s eligibility for a sentence reduction, he argues that the bureau erred in concluding that the program he completed does not qualify as “a program of residential substance abuse treatment” within the meaning of 18 U.S.C. § 3621(e). I concluded in the May 9 order that petitioner was not challenging his “custody” within the meaning of § 2241 because success on his claim would not entitle to him to immediate or speedier release. Under § 3621(e), a sentence “may be reduced” by the bureau if it determines that a prisoner meets the criteria. Thus, even if I agreed with petitioner that the bureau made a mistake, his remedy would not be a sentence reduction; it would be an order directing the bureau to exercise its discretion to determine whether a sentence reduction is appropriate.

In his motion, petitioner says that § 2241 *is* the proper vehicle to raise this challenge. He cites the decision of the Court of Appeals for the First Circuit, in which the court rejected various arguments petitioner made in the context of his criminal case. United States v. Graciani-Gonzalez, No. 10-1580 (1st Cir. Nov. 9, 2010). In that case, petitioner attempted

to raise his sentence reduction claim, but the court told him to raise it in a petition for a writ of habeas corpus in the district in which he is incarcerated.

Although I understand petitioner's frustration, I am bound by the decisions of the Court of Appeals for the Seventh Circuit, not the First Circuit. Under this circuit's law, a prisoner may not bring a claim under § 2241 unless success on his claim would entitle him to immediate or speedier release. Richmond v. Scibana, 387 F.3d 602, 605 (7th Cir. 2004); Bush v. Pitzer, 133 F.3d 455, 456 (7th Cir. 1997). Thus, if petitioner wishes to challenge the bureau's decision in this court, he will have to file a separate civil action. For example, in Richmond, 387 F.3d at 605-06, the court concluded that the prisoner should have brought his claim under the Administrative Procedure Act rather than § 2241.

With respect to petitioner's challenge to his segregation, he cites no authority undermining this court's determination that he must raise that claim in a federal civil rights action. Accordingly, I adhere to my conclusion regarding that claim.

With respect to petitioner's allegations of harassment and verbal abuse, if petitioner believes that prison officials are retaliating against him for exercising his constitutional rights, that is another claim that he must raise in the context of a civil action. The issue in this case is limited to whether petitioner is entitled to transfer to a halfway house.

ORDER

IT IS ORDERED that petitioner Edgar Amir Graciani's motion for reconsideration, dkt. #6, is DENIED.

Entered this 20th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge